

Kent Rutter on Texas Appellate Law Podcast

May 28, 2020 Kent Rutter

PRACTICES Appellate

Haynes Boone Partner [Kent Rutter](#) was interviewed on the Texas Appellate Law podcast about his appellate practice and an empirical study that he and Associate [Natasha Breaux](#) prepared analyzing reversal rates in the Texas intermediate courts of appeals.

Here is an excerpt of the podcast:

Tell us about your practice:

Rutter: One of the things that drew me to Haynes Boone is that it is a very rare example of an appellate boutique within the context of a large firm. Haynes Boone currently has seven full-time appellate lawyers in Houston and about 20 full-time appellate lawyers across the firm. Sometimes we are working with own litigators, but for the most part, the trial lawyers I work with [are] outside my firm.

Even more than other appellate lawyers, I get to do a little bit of everything. The three cases on my front burner right now involve a commercial lending dispute, a train crash, and a plane crash. It's a little bit of everything, and I just love that about my practice.

Can you tell us a little about the methodology that you used in coming up with the data that you relied on in preparing the article?

Rutter: The first step is to get our hands on every single civil appeal that is decided by the 14 intermediate courts of appeals during the courts' fiscal year that runs from Sept. 1 to Aug. 31. Then over the course of the year, we read each of those opinions. We have an Excel spreadsheet that we use to categorize the opinion according to what court it was, whether it was affirmed or reversed, [and] what type of case it was. In other words, whether it was a [personal injury] case, a business tort, contract, insurance coverage, etc.

We also track how it was decided by the trial court. Was it a jury trial, summary judgment, some combination of those, a special appearance, arbitration, etc.?

When we're done, we have a spreadsheet with about 1,800 cases on it that we can then sort in a bunch of different ways to slice and dice the data and answer very specific questions like "What is the reversal rate in the first court of appeals for summary judgments in contract cases?" And then, when we look at the reversals, we can answer questions like "When there is a reversal of a jury verdict, is it more likely or more frequent that the verdict will get set aside based on the insufficiency of the evidence or because there was an error in the jury charge?"

We can come up with empirical numbers to show what is and isn't likely to lead to reversal in the courts of appeals. Some of it I think confirms what appellate practitioners already know, but trial counsel often don't know.

Some of it really comes out of the blue and is a surprise to everyone, and that's the fun stuff for us.

To listen to the full podcast, click [here](#).

To read more about the report, click [here](#).